

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 20. ALCOHOL AND MIXED BEVERAGES**

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Chapter 20. Alcohol and Mixed Beverages [AMENDED]

SUMMARY:

The proposed amendment to Section 710:20-5-8 implements the provisions of SB 757 (2022) which amended 37A O.S. § 5-135 by striking subsection G thereof to remove compliance percentage parameters for the amount of gross receipts tax paid on spirits, wine, and beer in regard to an audit conducted by the OTC.

Other sections may be amended to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update or correct citations, update contact information, and ensure accurate internal cross-references, which do not change the interpretation or intent of the rules.

AUTHORITY:

68 O.S. § 203; 37A O.S. § 5-135; Oklahoma Tax Commission

COMMENT PERIOD:

Persons wishing to present their views in writing may do so by 4:30 p.m., February 7, 2023, at the following address: Oklahoma Tax Commission, Tax Policy and Research Division, Oklahoma City, Oklahoma 73194, Attention: Lisa Haws, or by email to lhaws@tax.ok.gov.

PUBLIC HEARING:

A public hearing is scheduled for 1:30 p.m., on Wednesday, February 8, 2023, at the Oklahoma Tax Commission, 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date by calling Lakesha Mackie at (405) 521-3133. Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

In order to facilitate entry into the building, those wishing to appear should contact Lakesha Mackie at (405) 521-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. In order to gain access to the hearing, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Although nothing in this rulemaking action has been determined to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed Rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the below listed contact person. The proposed rules may also be viewed on the agency's website at <http://www.tax.ok.gov>.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available from the below listed contact person. The Rule Impact Statement may also be viewed on the agency's website at <http://www.tax.ok.gov>.

CONTACT PERSON:

Lisa R. Haws, Agency Liaison, Tax Policy Division, Oklahoma Tax Commission, Oklahoma City, Oklahoma 73194. Telephone number: 405-521-3133; Email: lhaws@tax.ok.gov

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 20. ALCOHOL AND MIXED BEVERAGES
SUBCHAPTER 5. MIXED BEVERAGES**

710:20-5-8. Liability and audit of mixed beverage tax permit holder for gross receipts tax upon sale, preparation or service of all alcoholic beverages purchased or received

(a) **Liability in general.** Every mixed beverage tax permit holder or any other person transacting business subject to the gross receipts tax shall be liable for the tax upon the gross receipts from such beverages (on the basis of the number of drinks available for sale, preparation, or service from the total alcoholic beverages received). Each permit holder or other person shall be liable for the gross receipts tax upon any and all disposition by his agents or employees or any other persons on the premises of the mixed beverage tax permit holders or other person, except upon seizure or other disposition of the alcoholic beverage by employees of the ABLE Commission, Tax Commission, or other law enforcement agencies in the execution of their official duties. [**See:** 37A O.S. § 5-105]

(b) **Audit procedures.**

(1) Upon audit of the books and records of a mixed beverage establishment for gross receipts tax, it shall be assumed that spirits have been dispensed at the average rate of one and one-half fluid ounce, except for drinks with recipes calling for more than one type of spirit or for double portions of spirits, or upon reasonable evidence of a different rate of use.

(2) Wines will be presumed to have been dispensed at the average rate of six ounces (6 oz.) per serving. The Tax Commission may use an average rate greater or less than those set out in this ~~Rule~~ rule upon reasonable evidence of a different rate of use.

(3) ~~An audit may be conducted to determine if the correct amount of tax payable has been collected. The taxpayer will be deemed in compliance if the audit reveals that the amount of tax collected is:~~

~~(A) For spirits, within Eighty-four percent to One Hundred Sixteen percent (84-116%) of the amount of tax payable.~~

~~(B) For wine, within Ninety percent to One Hundred Ten percent (90-110%) of the amount of tax payable.~~

~~(C) For beer sold at draft and not in original packages, within Eighty-six percent to One Hundred Fourteen percent (86-114%) of the amount of tax payable.~~

~~(D) For beer in original packages, within Ninety-five percent to One Hundred Five percent (95-105%) of the amount of tax payable. [**See:** 37A O.S. § 5-135]~~

(4) In addition, a deduction may be allowed from the gross receipts tax liability determined by an audit or other investigation of the books and records of a mixed beverage tax permit holder, for alcoholic beverages that are:

(A) consumed in food as verified by the audit;

(B) destroyed due to breakage for which the permit holder has retained the container; or that portion thereof that has the unbroken seal; or for partial bottles destroyed by breakage for which the permit holder has completed a breakage affidavit listing the date of the occurrence, the brand and type of liquor, the size bottle, the approximate amount left in the bottle by 1/10ths, and the cause of the breakage. The affidavit shall be signed by the permit holder and two witnesses;

(C) stolen or destroyed by a disaster such as a fire or flood, provided that reasonable evidence is provided to support a claim. Reasonable evidence might include a copy of a police or sheriff's crime report; or an insurance claim detailing the inventory destroyed by brand, size, and type of liquor;

(D) not consumed, and exist or existed, at the close of a taxable period in question, provided that the amount and nature of the unconsumed inventory has been verified by agents of the Tax Commission, ABLE Commission, or verified by invoice to a mixed beverage permittee or wholesaler approved to purchase the inventory by the ABLE Commission. Partially filled bottles which are not included in a transferred inventory should be verified by a Tax Commission or ABLE Commission agent or agents.

(5) If an establishment was selling alcoholic beverages prior to the starting date of the audit period being used by the Commission in its audit, the establishment shall be required to furnish the Commission with a beginning inventory of all liquor, wine, and beer on hand if an ending inventory is offered for audit purposes. When the permittee is unable or unwilling to furnish such an inventory, then no beginning or ending inventories shall be considered for the audit period used and the audit will be conducted solely on the taxpayer's purchases made during the audit period.

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 20. ALCOHOL AND MIXED BEVERAGES**

RULE IMPACT STATEMENT

Pursuant to 75 O.S. §303(D), the Oklahoma Tax Commission provides the following rule impact statement with regard to proposed rule changes to Chapter 20 of Title 710 of the Oklahoma Administrative Code.

DESCRIPTION: The proposed amendment to Section 710:20-5-8 implements the provisions of SB 757 (2022) which amended 37A O.S. § 5-135 by striking subsection G thereof to remove compliance percentage parameters for the amount of gross receipts tax paid on spirits, wine, and beer in regard to an audit conducted by the Tax Commission.

CLASSES AFFECTED: Mixed beverage tax permit holders and any other persons transacting business subject to the gross receipts tax may be affected by this rulemaking action.

CLASSES BENEFITED: All taxpayers affected by this rulemaking action may benefit; it updates the Tax Commission's rules consistent with recent legislation.

PROBABLE ECONOMIC IMPACT OF THE PROPOSED RULE UPON AFFECTED CLASSES OF PERSONS OR POLITICAL SUBDIVISIONS: There are no anticipated increase to costs associated with the proposed rule changes.

LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE: The rulemaking action does not levy, implement, or increase an existing fee.

PROBABLE COSTS TO THE AGENCY: Costs to promulgate and enforce the proposed rules will be funded through normal agency budget. No measurable impact on State revenues is anticipated.

ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS: The agency does not anticipate any economic impact on any political subdivision to implement the proposed rule changes at this time.

SMALL BUSINESS IMPACT: After consideration with reference to Section 303(A)(4) and 303(B)(6) of Title 75, it is believed that the proposed rules will have no adverse impact upon Small Business.

ALTERNATIVE METHODS AND COSTS OF COMPLIANCE: There are no less costly or non-regulatory methods or less intrusive methods for achieving the

purpose of the proposed rules. No formalized compliance cost minimization measures have been pursued.

DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT: The agency does not anticipate any impact on public health, safety, or environment as a result of implementation of the proposed rules at this time.

DETERMINATION OF THE DETRIMENTAL EFFECT WILL THERE BE ON THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT IF THE RULE CHANGE IS NOT IMPLEMENTED: The agency does not anticipate any detrimental effect on public health, safety, or environment as a result of failure to implement the proposed rules at this time.

DATE PREPARED: December 13 2022